

MINUTES OF THE BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS

**2535 Capitol Oaks Drive, Suite 300
Sacramento, CA 95833**

**Thursday, June 13, 2013
Beginning at 10:00 a.m.**

Board Members Present: Paul Wilburn, President; Erik Zinn, Vice President; Diane Hamwi; Carl Josephson; Coby King; Mike Modugno; Hong Beom Rhee; Ray Satorre; Jerry Silva; and Patrick Tami

Board Members Absent: Kathy Jones Irish; Philip Quartararo; Robert Stockton; and Michael Trujillo [All absent due to pre-disclosed reasons.]

Board Staff Present: Ric Moore (Executive Officer); Joanne Arnold (Assistant Executive Officer); Nancy Eissler (Enforcement Manager); Celina Calderone (Board Liaison); Jeff Alameida (Budget Analyst); Larry Kereszt (Enforcement Analyst); Erin LaPerle (Geology Program Analyst); Ray Mathe (Staff Land Surveyor); Michael Donelson (Administrative Manager); Brooke Phayer (Outreach Coordinator); and Gary Duke (Legal Counsel).

I. Roll Call to Establish a Quorum

The meeting was called to order by President Wilburn at 10:10 a.m. Roll Call was taken, and a quorum established.

II. Public Comment

Emmitt Miller from Lafayette commented on the issues encountered with the Bay Bridge project. He noted numerous implications made by outside experts and acknowledged by those in charge. He pointed out the various defects that have been encountered during the build and inquired if there is cause for enforcement action, and if action has not been taken, why. He encouraged the Board to investigate media reports of negligence and incompetence. He shared a list of 27 articles for Board review and provided some history from the 1928 St. Francis Dam. He asked if the PE Act was in place during the construction of the Dam, would the Board have acted before the collapse. Mr. Miller is a P.E. but is speaking as a concerned citizen.

Mr. Moore read a letter into public comment from King Kaul, civil engineering comity applicant, regarding his examination experience. Mr. Tami suggested special accommodations for Mr. Kaul. Mr. Moore will be advising him of that option. Mr. Modugno understands the concern with computer based testing with respect to Mr. Kaul's age; however, he must pass the exam as there are no waivers.

President Wilburn welcomed Diane Hamwi and Coby King as the new members of the Board.

III. **Executive Officer's Report**

A. Legislation

1. Discussion of Legislation for 2013:

Ms. Arnold introduced herself to the new Board members and reported on the following legislation:

AB 186 –Professions and vocations: military spouses: temporary licenses. This bill would authorize a board within DCA to issue a temporary license for 12 months to an applicant who meets certain requirements.

STATUS: Introduced 1/28/13. Last amended 5/24/13. Passed ASM Appropriations 5/24/13 – to SEN.

BOARD POSITION: Oppose unless amended

Mr. Duke drafted language and provided a copy to the author's office and the Senate Business, Professions, and Economic Development Committee.

AB 1057 – Professions and vocations: licenses: military service. This bill would require each Board within DCA to inquire in every application for licensure if the applicant is serving in, or has previously served in, the military – commencing January 1, 2015.

STATUS: Introduced 2/22/13, amended 4/9/13. Passed Assembly. To be heard in SEN B,P&ED Committee 6/10/13.

BOARD POSITION: Watch

AB 1063 –Surveyors and engineers. (Amends Sections 6732, 8751, 8772 of, and adds Section 8764.6 to the B&P Code) This bill would prohibit the use of certain titles using the words engineer or surveyor unless the person is appropriately licensed. Additionally it would authorize a licensed surveyor to include additional information, as specified, with a record of survey. This bill would require any monument set by a land surveyor or civil engineer to be marked as specified, and to be marked with the name of the agency and the political subdivision it serves, if set by a public agency.

STATUS: Introduced 2/22/13. Last amended 5/6/13. Heard in ASM Appropriations 5/24/13 – held under submission.

BOARD POSITION: Oppose unless amended

This bill is now a two-year bill at the request of ACEC, the sponsor of the bill.

SB 152 –Geologists and Geophysicists: written contracts. (Add Section 7839.2 to B&P Code) This bill would require Geologists and Geophysicists to use a written contract when contracting to provide

geological or geophysical services, as specified. It will provide for consistent operations among engineers, land surveyors, geologists and geophysicists. This bill also repeals temporary authorizations for engineers, geologists and geophysicists. This is a Board sponsored bill.

STATUS: Last amended 4/8/13. Passed out of SEN BP&ED Committee 4/1/13. Passed out of SEN Appropriations 4/15/13 - on consent. To be heard in ASM B,P & CP Committee 6/11/13.

BOARD POSITION: Support

Ms. Arnold indicated that it is moving through appropriations.

SB 207 – Department of Consumer Affairs: license information. (Amend Section 27 of B&P Code) This bill will eliminate the requirement that the Board for Professional Engineers, Land Surveyors, and Geologists disclose its licensee's address of record. This is a Board-sponsored bill.

STATUS: Introduced 2/8/13. Scheduled to be heard in SEN BP&ED Committee 4/15/13 - bill pulled by author. This is a two-year bill.

BOARD POSITION: Support

SB 679 – Licensees: reporting requirements. (Amend Sections 6770, 6770.1, 6770.2, 8776, 8776.1, and 8776.2 of the B&P Code) This bill would revise the amount for a licensed engineer or Land surveyor to report a civil action judgment, settlement, arbitration award, or administrative action to the Board from "\$50,000 or more" to "more than \$50,000." It also reduces the reportable amount of any civil action judgment or binding arbitration award or administrative action of \$25,000 or greater.

STATUS: Introduced 2/22/13. Amended 4/8/13. Passed out of SEN. To be heard in ASM B,P&CP Committee 6/11/13 and then Judiciary Committee.

BOARD POSITION: Watch

SB 822 – Committee on Business, Professions and Economic Development. Professions and vocations. (Amend Section 7887 of, and add Section 7851 to, the B&P Code) This is one of the Committee's omnibus bills. Among other things it creates a "retired license" for geologists and geophysicists. Language provided by the Board.

STATUS: Introduced 3/20/13. Amended 4/22/13. Passed out of SEN. To be heard in ASM.

BOARD POSITION: Support

B. Strategic Plan Update

Mr. Alameida reported on the five main goals within the strategic plan. The chart in the agenda packet shows a breakout of the three-year plan,

indicating what has been completed, what is in progress, or what is remaining. Based on comments made at the April 18 Board meeting, Board members asked for quantifiable measurements and dates of when items were completed in lieu of a checkmark.

Mr. Silva would like a running list to add to the Strategic Plan as to not lose the items discussed and pointed out that the newsletter has not been produced in a while and inquired as to the delay. He believes that it is a great opportunity to highlight what the Board is doing. Mr. Moore indicated that Mr. Phayer has been assigned with the task to coordinate deadlines for the Board Bulletin.

- C. Personnel** – President Wilburn reported that the Board hosted the NCEES Western Zone meeting in San Francisco in April 2013. It was a large undertaking, and he recognized several staff members for their efforts in making it possible. He thanked Linda Brown, Ray Mathe, Nancy Eissler, Michael Donelson, and Celina Calderone, who did everything necessary to ensure that all ran smoothly. He particularly thanked Brooke Phayer for his diligence in coordinating the meetings and activities and presented Mr. Phayer with a Certificate of Appreciation.
- D. Administrative Task Force** – Mr. Moore reported that the task force has met twice since April. Currently, their main concern is with the aging of enforcement cases. The Task Force is comprised of two former Board members, enforcement staff, and Mr. Moore. They have analyzed the data that the enforcement staff has assembled. A group of investigation cases completed between January and March of 2013 were reviewed. Recommendations were made that staff is working on implementing. Some of the recommendations are as follows:
- One of the concepts is the implementation of a tracking system that is designed to monitor the status of investigation. Each analyst handles around 50 cases at any given time which can be in various stages. They recommended keeping the status in front of them at all time. The tools should be useful without being too cumbersome to maintain.
 - Another suggestion is to monitor adjustments in the workload volumes to balance the load. Consider an unlicensed case coordinator to encourage monitoring of unlicensed cases.
 - Suggest using internal staff more effectively to handle general inquiries about the practice and utilizing TAC members in a similar role.
 - Establish timeframe criteria on whether a complaint is within the Board's jurisdiction prior to opening a case.
 - Create a checklist to communicate with independent experts to assist in making sure we are tracking the experts and their role within the case.

- Consider implementing a regular case monitoring meeting to help with review cases that are not meeting their goals.
- Work out a schedule to regularly monitor cases with the Attorney General's Office.

Ms. Eissler added that the idea of utilizing TAC members to assist with reviewing the legal reporting cases was to focus on what information should be obtained from the licensee. Both Jim Foley and Gregg Brandow, members of the Administrative Task Force, have offered to help with that as well.

Mr. Satorre suggested a written summary for members to follow along. Mr. Moore acknowledged his request, and will provide a status report at the August Board meeting.

XV. Nomination and Election of President and Vice President for Fiscal Year 2013-2014

MOTION: Mr. Silva and Mr. Josephson moved to elect Mr. Zinn as President and Ms. Jones Irish as Vice-President.

President Wilburn inquired if there were any other nominations. Since there were none, the voting continued.

VOTE: 10-0, Motion Carried

Mr. Satorre requested term expiration dates for the Board Members. Ms. Eissler read them from the Board's website.

IX. Closed Session – Personnel Matters, Examination Procedures and Results, Administrative Adjudication, and Pending Litigation (As Needed) [Pursuant to Government Code sections 11126(a) and (b), 11126(c)(1), 11126(c)(3), 11126 (e)(1), and 11126(e)(2)(B)(i)]

A. Civil Litigation

1. Dennis William McCreary vs. Board for Professional Engineers, Land Surveyors, and Geologists, Sierra County Superior Court Case No. 7361
2. Thomas Lutge v. Board for Professional Engineers, Land Surveyors, and Geologists, Department of Consumer Affairs, Sacramento Superior Court Case No. 34-2012-80001329-CU-WM-GDS

B. Executive Officer Performance Evaluation

11:34 a.m. Mr. Silva left the meeting during closed session due to a pre-disclosed reason.

11:34 a.m. Mr. Satorre left the meeting during closed session and did not return.

X. Open Session to Announce the Results of Closed Session

Mr. Duke reported that the Board considered the evaluation of the Executive Officer as well as took action on five proposed decisions, and Ms. Eissler reported that the Board also took action on several stipulations and discussed the two lawsuits as noticed.

XII. Technical Advisory Committees (TACs)

A. Board Assignments to TACs

No assignments made.

B. Appointment of TAC Members

1. Reappointment of Mark Riches and William Owen to Geologist and Geophysicist TAC

MOTION: Mr. Zinn and Mr. Tami moved to reappoint Mark Riches and William Owen to the Geologist and Geophysicist TAC for a second term.

VOTE: 8-0, Motion Carried

MOTION: Mr. Zinn and Mr. Josephson moved to reappoint Williston Warren to the Structural TAC.

VOTE: 8-0, Motion Carried

VII. Consideration of Rulemaking Proposals

B. Adoption of Proposed Amendments to Title 16, California Code of Regulations Sections 475, 476, and 3065 (Codes of Professional Conduct)

Mr. Kereszt reported that on March 22, 2013, the regulation was noticed for public comment. There were no comments during the 45-day comment period. The next course of action is to prepare the final rulemaking package and submit it to the Department of Consumer Affairs and the Office of Administrative Law for review and approval.

MOTION: Mr. Tami and Mr. Zinn moved to adopt the proposed changes.

VOTE: 8-0, Motion Carried

MOTION: Mr. King and Mr. Tami moved to delegate to the Executive Officer the authority to finalize and submit the rulemaking file to the Office of Administrative Law.

VOTE: 8-0, Motion Carried

VI. Approval of Delinquent Reinstatements

MOTION: Mr. Zinn and Mr. Josephson moved to approve.

VOTE: 8-0, Motion Carried

VII. Reconsideration of Decision Regarding Delinquent Reinstatement Application of Dennis Reid

Ms. Eissler reported that the Board issued a decision granting reinstatement to someone whose license has gone delinquent conditioned upon his taking and passing the licensing examination again. When the applicant received the decision, he made a request, through his attorney, asking that the decision be changed to not require him to take and pass the licensing examination because he believes he is still technically competent since he has been performing mechanical engineering work during the period of delinquency. Ms. Eissler noted that he falls under the industry exemption and, therefore, did not need a license and was not practicing illegally at the time. In addition to the letter from the attorney that was included in the agenda packet, they also provided a binder of exhibits for review.

Mr. Donelson explained the reinstatement process and added that this applicant has been delinquent for 21 years; however, in the applicant's work area, it is considered exempt because he is doing research and development for and manufacturing of specialized transmissions for race cars/racing purposes. Mr. Donelson's concerns lie with the length of his delinquency. Mr. Duke pointed out that the laws do not specify a period of time after which the license cannot be reinstated without taking and passing the examination; therefore, the period of time the license has been delinquent cannot be the sole factor in deciding that the applicant must take and pass the licensing examination in order to reinstate a delinquent license. Mr. Duke noted that the law requires the applicant to demonstrate, to the Board's satisfaction, that he is currently competent to practice in the discipline in which he was licensed.

Mr. Tami expressed concern with the applicant's knowledge in other areas of mechanical engineering as described in the PE Act. Mr. Moore suggested that the Board might want to ask Mr. Reid to personally attend a Board meeting so that the Board members could discuss his experience with him. President Wilburn directed staff to invite Mr. Reid to attend an upcoming meeting. This item was continued until a future meeting.

XVII. Approval of Consent Items

(These items are before the Board for consent and will be approved with a single motion following the completion of Closed Session. Any item that a Board member wishes to discuss will be removed from the consent items and considered separately.)

A. Approval of the Minutes of the April 18, 2013, Board Meeting

MOTION: Mr. Tami and Mr. Zinn moved to approve minutes.

VOTE: 6-0-2, Motion carried, Mr. King and Ms. Hamwi abstained.

2:30 p.m. Mr. King left the meeting due to a pre-disclosed reason. There was no longer a quorum.

F. Discussion of Plastic ID Cards

Due to a lack of a quorum, this item was deferred to the August meeting.

III. Executive Officer's Report (Continued)

E. BreEZe Status Update

Mr. Moore explained BreEZe to the new Board members. The first phase was scheduled for July 2012, and Release III, which is the phase the Board is in, was scheduled for September 2013. He explained Release I has not yet started, and so there is currently about a year delay in transitioning to the new tracking system. BreEZe will be a standing item under the Executive Officer's Report to keep everyone up to date as workload will increase when Release I is introduced. Mr. Donelson reported that the Board's current system is antiquated. It currently incorporates two different systems, CAS and ATS. The new system will take both current systems and combine them into a web browser-type system. His estimation for production is 2014-15. Release I is tentatively scheduled for August 2013, but that date has been postponed in the past.

Mr. Alameida indicated that when the system goes live, the Board will begin a five-year payback period of costs. The Board will not see a drastic amount of costs in the beginning. Since there has been a delay, a portion of the costs have affected the budget. The dollars are built into our appropriation. At the end of the year, because the system has not begun, the Board will receive a reimbursement of those costs. The average annual cost for PELS is \$277,000.00 and \$2,000.00 for the Geology Program. There is an annual maintenance fee that goes into effect in five years, which for PELS is \$15,000.00 and \$200.00 for Geology. In addition to renewals, it will allow a credit card feature for application fees, delinquencies, etc. which is a separate project but combined with the implementation of BreEZe.

Mr. Donelson noted that the resource requirements will be great. It is anticipated that there will be considerable staff time dedicated to make sure that it is programmed, tested, and approved prior to production.

XI. Administration

A. Board Budget Presentation Options

Due to a lack of a quorum, this item was deferred to the August meeting.

B. FY 2012/13 Budget Overview

Mr. Alameida reviewed the PELS fund and the Geology fund. It identified the expenditures and revenue as of April 30, 2013. In addition, he discussed the budget allotment, projection to year-end, and surplus/deficit. The \$2 million loan payback is scheduled for 2013-14 which will then go into reserve.

IV. Enforcement

A. Enforcement Statistical Reports

Ms. Eissler presented the statistics. She indicated that there are still variations with case aging between meetings. Many are going through the Attorney General's Office. It will still be a while that the aging will increase as old cases go through the process. Mr. Moore reported that the Enforcement Program was able to utilize their entire appropriation without any of the appropriation being borrowed by another program.

B. Posting of Enforcement Actions on the Board's Website

Ms. Eissler suggested deferring this item to the August meeting as both Ms. Jones Irish and Mr. Satorre, who had requested this item be placed on the agenda for discussion, were not present. President Wilburn directed this item be included on the next meeting agenda.

V. Exams/Licensing

A. Spring 2013 Examinations Update

Ms. LaPerle reported that the pass rates for the geology examinations were in line with other states. There was a 74% pass rate for California applicants for the National ASBOG exams.

Mr. Mathe indicated that the State CBT examinations for civil engineering and land surveying went better than normal, and the administration was a positive experience overall. He reported that 78 out of 142 candidates passed the NCEES structural lateral forces for a 55% pass rate, and 76 out of 146 candidates passed the NCEES structural vertical forces for a 52% pass rate.

Mr. Mathe also reported that the timeframe for the release of the State Land Surveyor exam results was 32 days, and the State Civil Engineer examination results was 28 days.

B. EIT/LSIT Certification Update

Mr. Moore reported that in October 2012 the Board went to the process of allowing the Fundamentals of Engineering and Fundamentals of Surveying candidates to take the examination prior to applying to the California Board for certification. As of the end of May, 85% of passing FE candidates and 86% of FS candidates have applied for certification and have been certified. He added that outreach is continually being conducted to remind the candidates to apply for certification once they pass the examination.

C. EIT/LSIT Certificate Process Discussion

Due to a lack of a quorum, this item was deferred to the August meeting.

D. Licensing Statistics

Mr. Donelson reported that in the month of May, 1,886 credit card renewals were processed. Updates made to the renewal notice helped generate numerous online renewals.

He also reported that from January 1, 2013 through May 31, 2013, a total of 148 licenses were issued by comity.

Mr. Donelson presented a graph that indicated the average length of licensure by discipline from the time it was issued to its expiration.

Mr. Phayer revealed the new wall certificates. Mr. Moore indicated that there were complaints that the existing certificates were not lined up properly, and the seal was difficult to see. Therefore, the Board office will now be responsible for the printing of the wall certificates, rather than being printed by another agency. This is expected to begin for those candidates who passed the spring examinations.

VII. Consideration of Rulemaking Proposals (Continued)

A. Update on Board Rules 420.1 and 3021.1 (16 CCR 420.1 and 3021.1), Engineers, Land Surveyors, Geologists, and Geophysicists Applicants Fingerprints

Mr. Alameida reported that the Office of Administrative Law is currently reviewing, and the reviewing attorney has indicated that it should be approved and filed with the Secretary of State by August 31, 2013, so that the regulations would become effective October 1, 2013.

Ms. Eissler explained there are mandatory fees for the Department of Justice, the FBI, and Live Scan. A fourth fee goes to the facility where the Live Scan is administered. However, these are one-time fees that the applicant pays. Once the applicant has provided fingerprints and been placed in the system for criminal history reports to be sent to the Board, the applicants do not have to provide fingerprints again, nor do they have to pay any further fees.

Mr. Moore indicated that a license will not be issued until the Board receives and investigates a report from the Department of Justice.

XII. Technical Advisory Committees (TACs) (Continued)

C. Reports from the TACs

Mr. Zinn reported that the Geology & Geophysics TAC discussed formalizing interaction with the State Mining and Geology Board. He indicated that there are specific outdated notes that need to be updated. He requested that the Board initiate correspondence with the Executive Officer of the State Mining and Geology Board. Mr. Moore indicated that he will draft a letter for review by the Board President.

D. August 27, 2013 Joint TAC Meeting

Mr. Moore reported that there will be a joint meeting of the Civil Engineering, Land Surveying, and Geology & Geophysics TACs on August 27, 2013, the day before the next Board meeting, in Riverside, CA. Geology & Geophysics TAC member Bill Owen presented a report at the January 2013 Board meeting pertaining to Subsurface Utility Location. The Board directed staff to pursue an evaluation of this topic with the assistance of the Civil Engineering, Geology & Geophysics, and Land Surveying TACs and report their findings to the Board.

Mr. Zinn would like to discuss the general overlap between civil engineering, geology, and land surveying as well.

Mr. Modugno inquired as to the existence of a mechanical or electrical TAC. Mr. Moore stated that there was not one at this time. Mr. Modugno indicated that there could possibly be an issue coming up with the Field Act.

XIII. Liaison Reports

A. ASBOG

Mr. Moore reported that an out-of-state travel request has already been initiated for funding to attend the National ASBOG meeting.

B. ABET

No report given.

C. NCEES

1. Propose Amendment to NCEES Policy Regarding Number of Funded Delegates

Mr. Moore indicated that there are two representatives of other boards who are running for NCEES President Elect. Mr. Duke confirmed that if permission is granted to attend, a Board member may vote on behalf of the Board. However, since there is no longer a quorum, the Board cannot vote to direct its delegates on how to vote.

Mr. Moore also reported that President Elect Patty Mamola has appointed Mr. Tami to be Chair of the ACCA Committee, Mr. Josephson to the Mobility Committee, Mr. Donelson to the Foreign Experience Evaluation Task Force, and he, himself, to the Examination Professional Surveyor Committee. Mr. Modugno added that he was appointed to the Education Committee.

D. Technical and Professional Societies

No report given.

XIV. President's Report/Board Member Activities

Mr. Moore presented President Wilburn with a gavel plaque in recognition of his term as Board President. President Wilburn thanked everyone for their support and accomplishments.

XVI. Other Items Not Requiring Board Action

Mr. Moore reminded everyone that the next Board meeting will be held August 28 and 29, 2013 in Riverside, CA at the Department of General Services building.

XVII. Adjourn

Meeting adjourned at 4:44 p.m.

PUBLIC PRESENT

Emmett R. Miller

Roger Hanlin, CLSA

Bob DeWitt, ACEC

Craig Copelan, PECG